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PEND ORELLE COUNTY HEARING EXAMINER

APPEAL OF SEPA THRESHOLD  
DETERMINATION OF DNS RE:  
COMPREHENSIVE PLAN UPDATE,  
ENVIRONMENTALLY SENSITIVE  
AREAS REGULATIONS, AND ZONING  
MAP  
APPELLANT: RESPONSIBLE GROWTH  
RG\* NE WASHINGTON  
RESPONDENT: PEND OREILLE  
COUNTY

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
DECISION ON APPEAL OF SEPA  
THRESHOLD DETERMINATION

I. SUMMARY OF DECISION

**Hearing Matter:** Open record hearing of the appeal of the SEPA Threshold Determination of Nonsignificance (DNS) regarding the proposed Pend Oreille County Comprehensive Plan Update, and amendments to the Pend Oreille County Environmentally Sensitive Areas regulations and Pend Oreille County Zoning Map.

**Summary of Decision:** As more fully explained herein the appeal is denied.

II. FINDINGS OF FACT

A. Procedural Matters.

As early as 2019, Pend Oreille County began the process of adopting an update to the Pend Oreille County Comprehensive Plan, and amendments to the Pend Oreille County Development Regulations, including Chapter xx.36 Environmentally Sensitive Areas, and the Pend Oreille County Zoning Map. The proposed amendments to the Zoning Map are described as removing the zone designation of "Public Land" or "PL" from the designated zones and re-designating currently zoned PL lands as either Natural Resource Lands or another zone designation pursuant to Pend Oreille County Development Regulations. Resp. Exhibit 12, p. 3, paragraph 11.

Relative to the proposed Comprehensive Plan update, and amendments to the Development Regulations and the Zoning Map, the initial SEPA threshold determination of DNS was issued by the Pend Oreille County Community Development Department on April 23, 2021. Resp. Exhibit 10. On May 10, 2021, Appellant, Responsible Growth \* NE Washington (RG\*NEW), timely filed an appeal

1 of the DNS and an accompanying Statement of Appeal with the Pend Oreille County  
2 Community Development Department. Resp. Exhibit 1. The appeal of the SEPA  
3 Threshold Determination came before former Hearing Examiner David Hubert for an  
4 open public hearing on December 2, 2021. Hearing Examiner Hubert issued a  
5 decision on January 25, 2022, finding that Pend Oreille County failed to comply with  
6 WAC 197-11-330 and remanding the matter back to Pend Oreille County to rescind  
7 the initial SEPA threshold determination and conduct a new threshold determination  
8 process. *See, Findings of Fact, Conclusions of Law and Decision on Appeal of SEPA  
9 Threshold Determination, dated January 25, 2022.*

10 Pursuant to the Decision issued on January 25, 2022, Pend Oreille County  
11 completed a new SEPA Environmental Checklist on July 25, 2022. County Exhibit 2.  
12 Based upon the new Checklist and supporting documents referenced in the Checklist,  
13 Pend Oreille County issued a new SEPA threshold determination of DNS on July 27,  
14 2022, with an appeal period ending on August 10, 2022. On August 10, 2022,  
15 RG\*NEW timely filed an appeal of the new DNS, along with a memorandum in  
16 support of the appeal with the Pend Oreille County Community Development  
17 Department. *See, Application for an Appeal of Decision and Notice of Appeal by  
18 Responsible Growth \* Northeast Washington (hereafter "Appeal").*

19 Under Pend Oreille County Development Regulations (PCDR) xx.14.150, RCW  
20 43.21C.075, and WAC 197-11-680, the Hearing Examiner conducted an open public  
21 hearing on the Application for Appeal, on October 13, 2022, via the internet  
22 conferencing platform, ZOOM, pursuant to Pend Oreille County Code (PCC)  
23 xx.14.150. The hearing was conducted in accordance with the Spokane County  
Hearing Examiner Ordinance, codified in SCC Chapter 1.46; and the Spokane  
County Hearing Examiner Rules of Procedure, which have been adopted by the Pend  
Oreille County Board of County Commissioners.

The Hearing Examiner takes notice of the Pend Oreille County Comprehensive  
Plan ("Comprehensive Plan"), the Pend Oreille County Development Regulations,  
other applicable regulations, statutes, and case law.

The record includes the electronic recording of the testimony and arguments  
presented at the open public hearing, the documents contained within the application  
file at the time of the hearing, all exhibits admitted at the hearing, and all briefing of  
the respective parties to the appeal.

1           Additionally, the record includes all of the exhibits admitted at the hearing on  
2 December 2, 2021, by stipulation of the parties<sup>1</sup>.

3           The following persons testified at the hearing, under an oath administered by  
4 the Hearing Examiner and/or attended the hearing:

5           Phyllis J. Kardos  
6           2843 Scotia Road  
7           Newport, WA 99156  
8           [pkardos\\_jean@yahoo.com](mailto:pkardos_jean@yahoo.com)

9           Nathan G. Smith  
10           510 W Riverside Ave #800  
11           Spokane, WA 99201  
12           [nathan.smith@kutakrock.com](mailto:nathan.smith@kutakrock.com)

13           Greg Snow  
14           Community Development Department  
15           PO Box 5066  
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17           [gsnow@pendoreille.org](mailto:gsnow@pendoreille.org)

18           Andrea Forster  
19           32 Wildwood Lane  
20           Newport, WA 99156  
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22           Andy Huddleston  
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32           Bob Rumsey  
33           534 South Newport Avenue  
34           Newport, WA 99156

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39           Brian Kistler  
40           510 W. Riverside Ave. Suite 800  
41           Spokane, WA 99201  
42           [Brian.Kistler@KutakRock.com](mailto:Brian.Kistler@KutakRock.com)

43           Gretchen Koenig  
44           429311 Hwy 20  
45           Newport, WA, 99156  
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47           Jerry White  
48           [jerry@spokaneriverkeeper.org](mailto:jerry@spokaneriverkeeper.org)  
49           Tracy Morgan  
50           [tmorgan.rgnew@gmail.com](mailto:tmorgan.rgnew@gmail.com)

51           Norman Smith  
52           [Normsmith307@gmail.com](mailto:Normsmith307@gmail.com)  
53           Woody Myers  
54           [wlmw969@centurylink.net](mailto:wlmw969@centurylink.net)

55           The following exhibits were submitted during the hearing:

56           Appellant Exhibits:

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<sup>1</sup> Exhibits admitted at the December 2, 2021 hearing are referred to as Appellant Exhibits (App. Exhibit) and Respondent Exhibits (Resp. Exhibit) as they are identified in the January 25, 2022 decision. Exhibits admitted at the October 13, 2022 hearing are referred to as RG\*NEW Exhibits and Pend Oreille County Exhibits (County Exhibit).

- 1 • RG\*NEW Exhibit 1: January 25, 2022 Finding of Fact, Conclusion of Law, and  
Decisions. File No. RG NEW 2021 (13 pp.)
- 2 • RG\*NEW Exhibit 2: PendOreille Map 2018 (1 page)
- 3 • RG\*NEW Exhibit 3: Public Land rezones spreadsheet
- 4 • RG\*NEW Exhibit 4: LithgowZoningChanges, 2021(1 page)
- 5 • RG\*NEW Exhibit 5: SEPA with comments final Draft, July 18, 2022 (33 pp.)
- 6 • RG\*NEW Exhibit 6: SEPA Non-project proposals - Washington State Department  
of Ecology (1 page)
- 7 • RG\*NEW Exhibit 7: SEPA-Handbook, 2018 Updates (1 page)
- 8 • RG\*NEW Exhibit 8: POC Comprehensive Plan update, 2020 (195 pp.)
- 9 • RG\*NEW Exhibit 9: Department of Commerces News Releas, August 19, 2016  
(2 pp.)
- 10 • RG\*NEW Exhibit 10: \$300 million silicon smelter plan promises jobs in Usk,  
August 19, 2016 (2 pp.)
- 11 • RG\*NEW Exhibit 11: Kalispel Tribe. SEPA DNS Comments 08-10-2022 (2 pp.)
- 12 • RG\*NEW Exhibit 12: Kalispel Tribe Notice of Appeal (3 pp.)
- 13 • RG\*NEW Exhibit 13: Copy of Application-Permit Comparison 10 Year (1 page)
- 14 • RG\*NEW Exhibit 14: Building Permits and New Homes (1 page)
- 15 • RG\*NEW Exhibit 15: Building Permits and New Homes, 3 years comparison (1  
page)
- 16 • RG\*NEW Exhibit 16: POC Population indices 1969-2020 (1 page)
- 17 • RG\*NEW Exhibit 17: POC Population, 1969-2020, (1 page)
- 18 • RG\*NEW Exhibit 18: WA\_Newport\_subdivision\_aeria43 (1 page)
- 19 • RG\*NEW Exhibit 19: Large Lot Segregation Matrix property owners breakdown,  
Nov. 11, 2021 (9 pp)
- 20 • RG\*NEW Exhibit 20: Comp Plan Current & Proposed TOPU (1 page)
- 21 • RG\*NEW Exhibit 21: Futurewise comments 10 May 2021 (7 pp.)
- 22 • RG\*NEW Exhibit 22: Light Industrial Definitions 06-22-17A (2 pp.)
- 23 • RG\*NEW Exhibit 23: Working Draft Goals and Policies 02-17-17 (2 pp.)
- RG\*NEW Exhibit 24: CusickUsk Growth Area Plan August 31, 2017 (13 pp.)
- RG\*NEW Exhibit 25: Subarea plan zoning map (1 page)
- RG\*NEW Exhibit 26: Snow\_Technical Assistance Grant Support.NoD (1 page)
- RG\*NEW Exhibit 27: Styskel testimony 2022 Oct 7 (19pp.)
- RG\*NEW Exhibit 28: Styskel curriculum vitae 2022 Oct 7 (7 pp.)
- RG\*NEW Exhibit 29: TMorgan Vitae (4 pp.)
- RG\*NEW Exhibit 30: 20210407\_Stimson\_Map\_Proposed Properties (1 page)
- RG\*NEW Exhibit 31: Total Renewed CUPs on record POC (2 pp.)
- RG\*NEW Exhibit 32: Press Release Proposed Land Exchange (2 pp.)
- RG\*NEW Exhibit 33: RathdromArticles (9 pp.)
- RG\*NEW Exhibit 34: Flood (3 pp)
- RG\*NEW Exhibit 35: Draft FLUM Memo 11-2019 (4 pp.)
- RG\*NEW Exhibit 36: Governor Inslee Letter Pacwest (3 pp.)

- 1 • RG\*NEW Exhibit 37: Comments TMorgan 5-2021 (5 pp.)
- 2 • RG\*NEW Exhibit 38: Comments TMorgan 11-2021 (46 pp.)
- 3 • RG\*NEW Exhibit 39: New Construction Permits Issued 3 yrs (5 pp.)
- 4 • RG\*NEW Exhibit 40: Pend Oreille County Population Trends (1 page)
- 5 • RG\*NEW Exhibit 41: Futurewise CPU-18-POC to redesignate PL to Rural (4 pp.)
- 6 • RG\*NEW Exhibit 42: EPA Approves Kalispel Class I (4 pp.)
- 7 • RG\*NEW Exhibit 43: Adopted-Zoning-TOPU-12-22-15 (2 pp.)
- 8 • RG\*NEW Exhibit 44: Little Spokane River Water Bank (23 pp.)
- 9 • RG\*NEW Exhibit 45: rp\_burn\_cwpp\_pendoreille\_update (78 pp.)
- 10 • RG\*NEW Exhibit 46: rp\_burn\_identifynationwui (3 pp.)
- 11 • RG\*NEW Exhibit 47: Water supply impacts DOE (463 pp.)
- 12 • RG\*NEW Exhibit 48: gms-climate-planning-2008 (145 pp.)
- 13 • RG\*NEW Exhibit 49: Redlined Chapter XX.36 Environmentally Sensitive Areas (67 pp.)
- 14 • RG\*NEW Exhibit 50: SWAP (14 pp.)
- 15 • RG\*NEW Exhibit 51: POC\_Hydrologic-Critical-Areas (1 page)
- 16 • RG\*NEW Exhibit 52: CARA DOE (69 pp.)
- 17 • RG\*NEW Exhibit 53: ClimateTestimonyTM (7 pp.)
- 18 • RG\*NEW Exhibit 54: WRIA55 LSRW 20-11-055 (9 pp.)
- 19 • RG\*NEW Exhibit 55: TMorgan10-2022(15 pp.)
- 20 • RG\*NEW Exhibit 56: TM36\_FocalSpeciesWA (5 pp.)
- 21 • RG\*NEW Exhibit 57: NCQ2018\_allimpacts (4 pp.)
- 22 • RG\*NEW Exhibit 58: Corridors (13 pp.)
- 23 • RG\*NEW Exhibit 59: TMSummary (6 pp.)
- RG\*NEW Exhibit 60: SRK Hearing Examiner Testimony PO Co 10.13.22 (9pp.)

Respondent Exhibits:

- County Exhibit 1: DNS (1 page)
- County Exhibit 2: SEPA Checklist (33 pp.)
- County Exhibit 3: January 25, 2022 Decision of the Hearing Examiner (13 pp.)

The January 25, 2022, decision of the Hearing Examiner remanded the matter back to Pend Oreille County to rescind the previous SEPA Threshold Determination and conduct a new threshold determination process. County Exhibit 3, p. 12. The decision specified that the County should “identify and recognize what development would be allowed in the various zone designations under the Comprehensive Plan update and regulations amendments, consider the applicable codes and regulations that control development of those areas and what mitigation measures those codes and regulations require in the protection of the environment, and then evaluate as

1 much as possible the probability that development will occur and what  
2 environmental impacts are expected to occur in light of that evaluation.” *Id.*

3 As a result of the prior decision, the County conducted an updated SEPA  
4 threshold determination process and produced a new SEPA Checklist, dated July 25,  
5 2022. County Exhibit 2. The County asserts that the new Checklist describes the  
6 applicable updates to the Comprehensive Plan and Development Regulations,  
7 discusses the long term development trends within the County, and specifically  
8 describes the applicable mitigation measures that would apply to development  
9 occurring in the County as a result of the updates. Brief of Pend Oreille County, p.2.  
10 Based upon the updated SEPA threshold review process and new Checklist, the  
11 County contends they have complied with the requirements of the January 25, 2022,  
12 Hearing Examiner decision and met their burden to show *prima facie* compliance  
13 with the procedural requirements of SEPA. *Id.*

14 The proposed Comprehensive Plan Update would eliminate the land use  
15 classification of “Public Land” and reclassify properties currently classified as such as  
16 either “Rural Land” (R5, R10, R20, or R40) or “Natural Resource Land” (NR). App.  
17 Exhibit 12. In addition to the elimination of the “Public Lands” classification in the  
18 Comprehensive Plan the proposed amendment to the Zoning Map would eliminate  
19 the zone designation of “Public Land”, combine the zone designations of “Natural  
20 Resource Lands” NR20 and NR 40 into a single designation of “Natural Resource”  
21 without distinction between 20 acre parcels or 40 acre parcels, and add two new zone  
22 designations, “Commercial” and “Industrial”. Three new land uses are added to the  
23 identified uses in the zoning matrix; “Apartment House (3)”, “Industrial (Heavy)”,  
and “Industrial (Light)”. App. Exhibit 12. A comparison of the current zoning  
designation matrix with the proposed matrix indicates several uses currently  
prohibited in the “Public Land” zone are allowed either outright or as a conditional  
use in the newly proposed zone designations. App. Exhibit 2.

The new Checklist published by the County added a significant amount of  
additional information to what was included in the initial Checklist. The initial  
Checklist from 2021 is 20 pages long, and the new Checklist is 33 pages long. *See*,  
Resp. Exhibit 12; County Exhibit 2. The new Checklist indicates that in addition to  
the Checklist a Resource Lands Review (Resp. Exhibit 7), best available science  
documentation prepared for Stevens County (Anchor QEA, 2021), and guidance  
documents from the Washington State Department of Ecology related to wetlands  
provision and other critical areas were used in creating the proposed updates. County  
Exhibit 2, p. 2-3, paragraph 8. Soil types and character within Pend Oreille County  
were considered in preparation of the Checklist by consideration of and reference to



1 the Soil Survey of Pend Oreille County Area, Washington<sup>2</sup>, and the U.S. Department  
2 of Agriculture National Resources Conservation Service Web Soil Survey<sup>3</sup>. County  
3 Exhibit 2, p.9, paragraph 1. c. Sensitive plant types and noxious weeds and invasive  
4 species within Pend Oreille County were identified and considered by reference to the  
5 2019 Washington Vascular Plant Species of Special Concern Washington Natural  
6 Heritage Program, July 2019, of the Washington State Department of Natural  
7 Resources and via the internet [https://pendoreilleco.org/wp-](https://pendoreilleco.org/wp-content/uploads/2019/01/2019-Weed-List-W.pdf)  
8 content/uploads/2019/01/2019-Weed-List-W.pdf. County Exhibit 2, p.15, paragraph 4  
9 and p. 16, paragraph e. State guidance regarding wetland protections was also  
10 considered, specifically with regard to the updating of the Sensitive Area Code and  
11 Shoreline Master Program. *Id.*, p. 22.

12 The new Checklist identifies types of uses permitted in each of the affected  
13 zones within the comp plan update. County Exhibit 2, p. 6. The Checklist indicates  
14 that the Rural Residential zone primarily permits residential uses, including  
15 multifamily, with other limited uses permitted via the Conditional Use Permit (CUP)  
16 process; the Residential zone permits larger lot residential uses and limited other  
17 uses via the CUP process; the Natural Resource zone permits natural resource  
18 related uses after compliance with the County's comprehensive plan; the Commercial  
19 zone allows a wide variety of uses intended for commercial style development; the  
20 Industrial zone is intended to allow to industrial development in compliance with  
21 additional environmental review and approval for intensive development; and the  
22 Tribal zone is subject to the requirements of the Kalispel Tribe. *Id.*

23 The new Checklist also addresses the potential for development within the  
County. County Exhibit 2, p. 4. The County took into consideration the Washington  
State Office of Financial Management (OFM) projections for population growth in  
Pend Oreille County to account for population growth and by extension residential  
growth and development within the County. *Id.* The OFM projections indicate a  
population increase in Pend Oreille County of 895 people through the year 2039,  
which equates to 45 new residents, or 19 new households, per year. *Id.* The County  
also took into consideration building permit data to project an annual residential  
growth rate of 1% in the southern part of the County and 0.5% in the rest of the  
County. *Id.* With regard to commercial development, the County looked at permit

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<sup>2</sup> Soil Survey of Pend Oreille County Area, Washington, prepared for the National Resource Conservation Service by N.Donaldson, J. Defrancesco, M. Haagen, D. Barron, and R. Coleman, October 1992.

<sup>3</sup> <http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm>

1 application data going back to 2017. The County noted that there were 21 approved  
2 commercial development permits since 2017 and based upon this historical data  
concluded that commercial development was likely to continue at a similar rate. *Id.*

3 The County also recognized the potential for industrial development as a  
4 result of the proposed updates. The County noted that all of the recent industrial  
5 development in the County has undergone independent environmental review at the  
6 time of the project permit processing, specifically pointing to the Condition Use  
7 Permit that was issued to Merkle Standard to operate a cryptocurrency mining  
8 facility near Usk, WA. *Id.*, p. 3-4. In his testimony, Greg Snow noted that the areas  
9 newly zoned for industrial uses are limited and primarily either in use or previously  
10 used for industrial purposes. *See*, Testimony of Greg Snow. Mr. Snow specifically  
11 cited to the site of the former papermill, currently in use as a cryptocurrency mining  
12 facility; the existing lumber mill in Usk; an existing railroad yard, where locomotives  
13 are refurbished; and one parcel that is not currently developed for industrial use, but  
14 was formerly a log sorting facility for the lumbermill and is located on a highway  
15 with numerous rail spurs to and from the site. *Id.* Based upon this review of types of  
16 uses and future potential for development, the County concluded that implementing  
17 the proposed Updates would not lead to a significant increase in the rate of future  
18 development within the County. *Id.*, p. 5.

19 Section B of the new Checklist was also significantly revised, with considerable  
20 information added regarding the mitigation measures contained in the County  
21 regulations to the potential impacts on the various environmental elements  
22 addressed in the Checklist. The original Checklist includes numerous responses to  
23 questions with the following or similar statements: “Not applicable, non-project  
action. Impacts of specific projects will be addressed by project-level SEPA review, if  
required.” Resp. Exhibit 12. The new Checklist revised this response to “As a non-  
project action, the proposal will not directly result in impacts to...” *See*, County  
Exhibit 2. Following which the County acknowledges that the potential development  
permitted by the proposed updates may have impacts on the various environmental  
elements identified in the Checklist and addresses the mitigation measures included  
in the County’s regulations. *Id.*

In section one of the new Checklist, which addresses the Earth element, under  
subsection ‘d’ dealing with unstable soils, the County identified that “[u]nstable soils  
are expected to exist throughout the County,” and described the mitigation measures  
that exist within the Geologic Hazard section of the Sensitive Areas Code would be  
applied along with other regulations to mitigated development impacts in these  
areas. County Exhibit 2, p. 9. In section three, Water, under subsection ‘b’ dealing  
with ground water, the County identified that “additional water withdrawals are



1 expected as growth and new development continues to occur in the County and  
2 consistent with the growth projection in the Comprehensive Plan.” The County then  
3 describes the applicable mitigation measures that would apply, first acknowledging  
4 that state water law would apply, and that the County would need to verify that  
5 water was both legally and physically available and if not the application would be  
6 denied. Additionally, the County identified that the critical aquifer recharge area  
7 protections included in the updated Sensitive Area Code would help protect the  
8 ground water in the County. *Id.*, p. 13. In testimony provided at the hearing, Greg  
9 Snow, also stated that the County considered the watershed management plans that  
10 apply to the various watersheds within the County, which are identified in the water  
11 section of the new Checklist. *See*, Testimony of Greg Snow; County Exhibit 2.

12 In section five, Animals, the County identified protected species that are  
13 known to exist in the County, including Bull Trout, Canada Lynx, Grizzly Bear, and  
14 Woodland Caribou. County Exhibit 2, p. 16. The new Checklist next identifies the  
15 applicable mitigation measures included in County regulations, specifically noting  
16 that the Sensitive Area Code and Shoreline Master Program include provisions  
17 designed to protect and preserve wildlife habitat. *Id.* The new Checklist also lists  
18 specific mitigations measures the County will utilize at the project level to avoid or  
19 reduce impacts. These measures include: provide erosion and stormwater control  
20 measures during construction, particularly in areas adjacent to surface waters that  
21 provide fish and wildlife habitat; consider landscaping with native plants to provide  
22 vegetation of habitat significance in along roadways, buffers for stormwater swales,  
23 rain gardens, and other habitat features; avoid, minimize, or mitigate impacts to  
priority habitats, wetlands or wetland buffers, in accordance with the Sensitive Areas  
Code and Shoreline Master Program; promote the preservation of on-site native  
vegetation, particularly riparian vegetation near surface waters and upland habitats;  
publicize and encourage the preservation of native soils and protect the natural  
processes of soil maintenance and on-site hydrology, leaving areas/tracts ("belts") of  
native vegetation undisturbed in commercial and residential developments can be  
shown to provide long term benefits regarding stormwater management, on-site  
"landscaping" maintenance, microclimate, and general aesthetics/sense of well-being  
in a developed landscape; sponsor or encourage public education about the benefits of  
native vegetation; promote native plant retention in greenbelts between and within  
areas of proposed development to retain a portion of the wildlife habitat on the site  
and to preserve a measure of connectivity between areas of wildlife habitat; and,  
encourage buffer enhancement, where stream and/or wetland buffers to be left are in  
a degraded condition, encourage enhancement of the buffer through means such as  
establishment of native vegetation and control of non-native invasive plant species.

1 *Id.*, p. 16-17. The County continued to identify and acknowledged potential impacts  
2 under each environmental element covered in section B of the new Checklist and  
3 then identify the regulations that contain applicable mitigation measures. *See*,  
County Exhibit 2.

4 In addition to the new Checklist, Greg Snow, the Director of the Pend Oreille  
5 County Community Development Department, testified regarding the County's  
6 SEPA threshold determination process. Testimony of Greg Snow. The County also  
7 provided testimony from Ben Floyd from White Bluffs Consulting, who assisted the  
8 County with the SEPA process. Testimony of Ben Floyd. Mr. Floyd testified  
regarding the SEPA review process that the County followed in reaching the new  
threshold determination. *Id.* Specifically, Mr. Floyd provided testimony about factors  
that were considered by the County during the process which were not explicitly  
included in the new Checklist. *Id.*

9 The Appellants contend that the County "failed to consider the individual and  
10 cumulative impacts of the newly allowed uses and changes in the critical area code."  
11 Appeal, p.6. Specifically, Appellants assert that the County failed to analyze the  
12 cumulative impact of increased development on forest fires, groundwater, wildlife  
13 and wildlife habitat, streams and lakes, and rural character. *Id.* As a result,  
14 Appellants conclude that the County "lacked adequate information on which to base  
15 the threshold determination, resulting in an invalid DNS." *Id.* In support of their  
16 allegations of error the Appellants provided exhibits containing environmental  
studies and information allegedly not considered or ignored by the Community  
Development Department. Witnesses offered by the Appellant also testified of  
environmental impacts allegedly not considered or ignored. Testimony of Ed Styskel;  
Testimony of Woody Myers; Testimony of Jerry White; Testimony of Tracy Morgan;  
Testimony of Phyllis Kardos.

17 The record shows that as a result of the proposed updates, uses previously  
18 prohibited in the "Public Land" zone are now allowed in the redesignated zones, for  
19 example uses such as residential, commercial, industrial, master planned resorts,  
20 recreational vehicle parks, etc. Appellants argues that the possible impacts of  
21 development on lands previously zoned as PL will be significant adverse  
22 environmental impacts. Woody Myers, a retired wildlife research scientist with 40  
23 years of experience working for the Washington State Department of Fish and  
Wildlife (WDFW), provided testimony regarding the potential effects of increased  
development on wildlife and habitat connectivity. *See*, Testimony of Woody Myers.  
Mr. Myers testified that the proposed changes in zoning allowing for new residential  
development will likely result in impacts to wildlife species using those habitats. He  
noted that the WDFW Priority Habitat Species maps identify numerous species

1 including six large mammals listed in the sections of the County that have been  
2 selected for rezoning from PL to either NR 20 or NR 40, which would permit new  
3 development in these areas. *See*, App. Exhibit 22; Testimony of Woody Myers. Mr.  
4 Myers noted that the rezoning of these parcels was scattered across the County,  
5 which he testified would lead to “habitat fragmentation.” Mr. Myers explained  
6 habitat fragmentation would be caused by the development of the newly designated  
7 parcels breaking up and taking away habitat from various species, hindering the  
8 animals ability to move freely throughout their traditional habitat which would  
9 eventually lead to a decline in animal populations and an “impaired gene flow.” *Id.*  
10 These effects, if left unchecked, could ultimately lead to the extinction of threatened  
11 or endangered species with small home ranges, because the animals are unable to  
12 adapt genetically to the habitat limitations. Testimony of Woody Myers.

13 Appellants also presented testimony from Ed Styskel, who testified that even  
14 the presence of domesticated dogs and cats in conjunction with residential  
15 development present an impact on the natural environment and fish and wildlife.  
16 Testimony of Ed Styskel. Mr. Styskel asserts that the mitigation measures proposed  
17 by the County will not protect critical areas against probable significant adverse  
18 impacts from disturbance and contamination by humans, pet cats, and pet dogs. *Id.*  
19 Mr. Styskel testified that domestic cats that are allowed to roam freely from their  
20 household will prey on birds, mammals, reptiles, amphibians, and insects. They can  
21 contaminate the ground and surface water with fecal or flea parasites that transfer  
22 to humans, wildlife, and other pet animals. Cat-owners may discard litter box  
23 contents with infectious agents onto the surrounding areas instead of properly  
bagging and disposing at landfills. *Id.* He also asserted that free-roaming dogs can  
defecate in critical areas some distance from their home, and their close proximity  
facilitates repetitive contamination. Additionally, free-roaming dogs will chase,  
injure, or kill deer and almost any other wildlife species. Research studies show that  
pet dogs not under an owner’s control can roam up to 0.3 mile, many times more  
distant than the buffer widths for wetlands, riparian areas, and critical habitats. *Id.*;  
RG\*NEW Exhibit 27.

19 Appellants provided further testimony from Jerry White, a community  
20 advocate with the Spokane River Keeper organization. *See*, RG\*NEW Exhibit 60. Mr.  
21 White provided testimony regarding the potential impacts of the proposed updates on  
22 the ground and surface water within Water Resource Inventory Area (WRIA) 55,  
23 which encompasses the Little Spokane River watershed. *Id.*; Testimony of Jerry  
White. Mr. White asserted that the proposed updates could pose significant adverse  
environmental impacts to ground and surface water within WRIA 55. He noted that  
during summer months the flow rates of the Little Spokane River are derived

1 primarily from ground water. Under current conditions the Little Spokane River flow  
2 rates, as set by WAC chapter 173-555, are frequently not met during summer and  
3 early fall months. These flow rates were set to protect fish habitat and human use.  
4 The flow rates were determined by WDFW to be the minimum necessary to support  
5 the redband trout and whitefish. *Id.* Mr. White further testified that the pumping of  
6 groundwater for household use has adversely affected flow rates in the little Spokane  
7 river. *Id.*

8 In 2020, the WRIA 55 management plan was developed to mitigate continued  
9 consumption of groundwater and the impacts on WRIA 55. *Id.* Pend Oreille County  
10 was a party to developing the management plan and has adopted it. The WRIA 55  
11 management plan was based in part on estimates that 332 new homes, relying on  
12 permit exempt wells for ground water withdrawals, would be developed within the  
13 Pend Oreille County WRIA 55 area in the next 20 years. *Id.* Mr. White concluded  
14 that if the proposed updates increase the number of new homes relying on  
15 groundwater within WRIA 55, there will be significant adverse impacts to  
16 groundwater and flow levels of Little Spokane River which will effect redband trout  
17 and other fish species. *Id.*

18 In addition to the witnesses discussed above, Phyllis Kardos and Tracy  
19 Morgan presented testimony and argument on behalf of the Appellants. *See,*  
20 Testimony of Phyllis Kardos; Testimony of Tracy Morgan. The presentations by Ms.  
21 Kardos and Ms. Morgan consisted of an amalgamation of argument and testimony  
22 regarding the County's proposed updates and SEPA process, focusing on aspects  
23 which were allegedly not considered by the County. *Id.* Ms. Kardos and Ms. Morgan  
submitted a large number of exhibits, consisting primarily of environmental studies  
and state agency environmental guidance documents. *See generally,* RG\*NEW  
Exhibits.

Any finding of fact above that is a conclusion of law is deemed a conclusion of  
law.

### III. CONCLUSIONS OF LAW AND ANALISYS

#### A. Standard and Scope of Review:

On appeal, an agency that issues a determination of non-significance must  
show that environmental factors were considered in a manner sufficient to amount to  
prima facie compliance with procedural requirements of SEPA. *Sisley v. San Juan  
County*, 89 Wn2d 78, 84, 569 P.2d 712 (1977).

The standard of review for an appeal of a SEPA threshold determination is  
whether the agency's action is clearly erroneous. *Norway Hill Pres. & Prot. Assn. v.*

1 *King County Council*, 87 Wn.2d 267, 274, 552 P.2d 674 (1976); *Sisley v. San Juan*  
2 *County, supra*; *Lands Council v. Wash. State Parks & Recreation Comm'n*, 176 Wn.  
3 App. 787, 795, 309 P.3d 734 (2013). A decision is clearly erroneous if, after reviewing  
4 all the evidence, the trier of fact is left with the firm conviction that a mistake has  
5 been committed. *Lands Council v. Wash. State Parks & Recreation Comm'n, supra*,  
6 795. The decision of the agency issuing the threshold decision is to be given  
7 substantial weight. RCW 43.21C.090; *Norway Hill Pres. & Prot. Assn. v. King*  
8 *County Council*, 87 Wn.2d 267, 275, 552 P.2d 674 (1976); *Boehm v. City of Vancouver*,  
9 111 Wn. App. 711, 716, 47 P.3d 137 (2002).

10 The scope of this appeal is limited to determining whether the record of a  
11 negative threshold determination by the Department demonstrates that  
12 environmental factors were considered in a manner sufficient to amount to prima  
13 facie compliance with the procedural requirements of SEPA, meaning that the  
14 determination was based upon information reasonably sufficient to determine the  
15 environmental impact of a proposal. *See*, Decision Re: Hearing Examiner Authority  
16 to Hear SEPA Appeals.<sup>4</sup>

#### 17 **B. SEPA Procedural Requirements:**

18 A SEPA threshold determination must be based upon information reasonably  
19 sufficient to evaluate the environmental impacts of the proposed action, in this case  
20 the proposed Comprehensive Plan update, Development Regulations, and Zoning  
21 Map amendments. WAC 197-11-040(4)(c). An environmental review must begin by  
22 review and consideration of an environmental checklist. WAC 197-11-060 (2)(b);  
23 WAC 197-11-330 (1)(a). To determine whether an Environmental Impact Statement  
will be necessary a threshold determination is made by the lead agency for the  
environmental review. In making a threshold determination, the responsible official  
shall consider any mitigation measures required by development regulations,  
comprehensive plans, or other existing environmental rules or laws. WAC 197-11-  
330. A Determination of Non Significance (DNS) may be issued if the lead agency  
finds that the proposed action will not have a probable significant, adverse  
environmental impact. RCW 43.21C.031; WAC 197-11-330; WAC 197-11-340. To  
defeat the appeal in this matter, the record produced by Pend Oreille County in  
support of its threshold determination of DNS must demonstrate that environmental  
factors were considered in a manner sufficient to amount to prima facie compliance

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<sup>4</sup> No additional argument or authority was submitted regarding the scope of the Hearing Examiner's  
authority in this matter, therefore the Hearing Examiner defers to the holding of the previous  
decision.

1 with the procedural requirements of SEPA. *Sisley v. San Juan County*, 89 Wn.2d 78,  
2 84 – 85, 569 P.2d 712 (1977).

3 The content of the environmental review depends on each particular proposal,  
4 on the agency's existing planning and decision-making processes, and on the time  
5 when alternatives and impacts can be most meaningfully evaluated. WAC 197-11-  
6 060 (2)(a). Phased review of proposals is appropriate when the sequence is from a  
7 non-project document to a document of narrower scope such as a site-specific  
8 analysis. WAC 197-11-060 (5)(c)(i). The timing of environmental review can be  
9 difficult to determine, however postponing the environmental review too long or  
10 failing to recognize that future land use proposals may be exempt from  
11 environmental review could result in the loss of opportunity for said review. *Lands  
12 Council v. Wash. State Parks & Recreation Comm'n*, 176 Wn. App. 787, 803 – 804,  
13 309 P.3d 734 (2013). The responsible official must determine when environmental  
14 analysis will be most effective in providing sufficient information to the decision  
15 maker to make an informed decision regarding whether to adopt the proposal or not.  
16 WAC 197-11-330 (2)(b). A threshold determination shall not balance whether the  
17 beneficial aspects of a proposal outweigh its adverse impacts, but rather, whether a  
18 proposal has any probable significant adverse environmental impacts under the rules  
19 stated in WAC 197-11-330.

20 When considering an amendment to zoning designations, such as in this case,  
21 a delay of full implementation of the environmental policies of SEPA until the  
22 development permit stage is allowed, provided that the municipality has the  
23 authority to implement those policies at the permit stage and so long as the  
24 environmental consequences of any development of the property are disclosed and  
25 considered at the time the zoning amendments are adopted. *Ullock v. Bremerton*, 17  
26 Wn. App. 573, 584 – 585, 565 P.2d 1179 (1977) (quoting *Narrowsview Preservation  
27 Ass'n v. Tacoma*, 84 Wn.2d 416, 526 P.2d 897 (1974)); *Hayden v. Port Townsend*, 93  
28 Wn.2d 870, 879, 613 P.2d 1164 (1980). A DNS may be issued upon a finding that the  
29 proposed action will not have a probable significant, adverse environmental impact.  
30 RCW 43.21C.031; WAC 197-11-330; WAC 197-11-340.

31 The parties are in agreement that the previous decision in this matter  
32 required the County to address three issues in their new SEPA threshold  
33 determination process. *See*, Testimony of Nathan Smith; Testimony of Phyllis  
34 Kardos. First, identify what development would be permitted under the proposed  
35 updates; second, consider the applicable codes and regulations and what mitigation  
36 measures are required by the same; and third, evaluate the probability that  
37 development will occur and what environmental impacts are expected to occur as a  
38 result. *Id.*; County Exhibit 3, p. 12.



1 The County addresses the first requirement to identify what development will  
2 be permitted in the new Checklist when providing a description of the complete  
3 proposal. County Exhibit 2, pp. 4-7. The County identifies the primary types of  
4 development that will be permitted in each of the zones included in the in the  
5 “Updated Zoning Map” and corresponding “revised Table of Permitted Zoning Uses.”  
6 *Id.*, pp. 5-6. The Appellants argue that the County did not sufficiently identify the  
7 development that would be permitted under the proposed updates. *See*, Testimony of  
8 Phyllis Kardos. Ms. Kardos noted during her testimony that the new Checklist did  
9 not mention or specifically address planned unit developments, which are a new type  
10 of permitted residential development under the proposed zoning regulations.  
11 Testimony of Phyllis Kardos; App. Exhibit 13. Based on their arguments it is clear  
12 that the Appellants believe a more detailed identification of the permitted uses is  
13 necessary. However, Appellants’ argument does not address why a more detailed  
14 identification of permitted development is necessary or how the permitted  
15 development identified by the County is deficient. The new Checklist prepared by the  
16 County clearly identifies the primary types of development which will be permitted  
17 under the proposed updates. Therefore, the Hearing Examiner finds that the County  
18 identified the development permitted by the proposed updates in a manner that  
19 amounts to prima facie compliance with the procedural requirements of SEPA.

20 As discussed in the findings of fact, the new SEPA Checklist prepared by the  
21 County included a thorough analysis of the various regulations that apply to the  
22 permitted development and the mitigation measures required by those regulations to  
23 prevent adverse environmental impacts on each of the environmental elements that  
are considered within the Checklist. *See*, County Exhibit 2. The Appellants agreed  
that the additional information included by the County in section ‘B’ of the checklist  
met the second requirement to consider the applicable codes and regulations and the  
related mitigation measures required thereunder. Testimony of Phyllis Kardos<sup>5</sup>.  
Accordingly, the Hearing Examiner finds that the County considered the applicable  
regulations and associated mitigation measures in a manner that amounted to prima  
facie compliance with the procedural requirements of SEPA.

Finally, the third issue the County was required to address in the updated  
SEPA process was to “evaluate as much as possible the probability that development  
will occur and what environmental impacts are expected to occur in light of that  
evaluation.” County Exhibit 3, p. 12. In the new Checklist, the County evaluated a  
number of factors regarding the probability of development. To evaluate the

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<sup>5</sup> Appellants’ closing remarks.

1 probability of residential development, the County relied on the projection for  
2 population growth from the State Office of Financial Management (OFM). County  
3 Exhibit 2, p. 4. The OFM projections indicate that the County population will  
4 increase by 895 people through the year 2039. *Id.* The County then looked at the  
5 historical location of residential building permits and determined that the annual  
6 growth rate for the southern part of the County would be around 1%, while the  
7 remainder of the County would grow at an annual rate of approximate 0.5%. *Id.* The  
8 County also evaluated the history of applications for commercial development, Mr.  
9 Floyd noted that there have been very few recent applications for commercial  
10 development. Testimony of Ben Floyd. The County also noted that there were no  
11 pending applications and determined that the rate of commercial development was  
12 unlikely to change. *Id.* Additionally, the County evaluated the probability of  
13 industrial development as well. The County specifically considered all of the locations  
14 that had been rezoned for potential industrial development. Testimony of Greg Snow.  
15 The County noted that the majority of the sites are already developed for specific  
16 industrial uses, even if they are not in current use. Testimony of Greg Snow. They  
17 also pointed out that any new industrial development would be required to undergo a  
18 separate environmental review. Testimony of Ben Floyd. Based upon the evaluation  
19 conducted by the County, it was determined that the overall probability of future  
20 development was low. Testimony of Greg Snow.

21 The Appellants argue that the County did not conduct an adequate evaluation  
22 of potential development under the proposed updates. The Appellants first contend  
23 that the County should not have relied on the OFM projections as an accurate  
measure for residential development. *See*, Testimony of Tracy Morgan. Appellants  
first contend the OFM numbers are inaccurate because there has been significant  
growth in Spokane and Kootenai Counties and these growth trends in neighboring  
counties will spread to Pend Oreille County. *Id.* This argument regarding the  
residential growth rate fails to establish any correlation between the reasons for  
significant growth in neighboring counties and the currently proposed updates to the  
County's Comprehensive Plan. Appellants also presented two graphs depicting  
populations trends in the County. RG\*NEW Exhibit 16 and 17. Appellants indicated  
that these graphs show the County is growing and will continue to do so into the  
future. Testimony of Phyllis Kardos. The graphs submitted by the Appellants are  
pages 3 and 5 of a 13 page document, the remainder of the document was not  
submitted into the record. Appellants indicated that the graphs were put together by  
an economic non-profit group from the Seattle area. Testimony of Phyllis Kardos.  
Appellants did not name which group and the exhibits do not provide any indication.  
The lack of a complete document along with a lack of background information

1 provides the Hearing Examiner with no means of weighing the credibility or context  
2 of these exhibits. The Appellants argument regarding these exhibits implies that the  
3 future growth rate of the County will be higher than the OFM projections relied on  
4 by the County, however the evidence submitted by the Appellants does not refute the  
OFM projections or support the conclusion that the County's reliance on the OFM  
projections is clearly erroneous.

5 The Appellants argued further that the County failed to take into  
6 consideration potential industrial projects, specifically a quarry project near  
7 Diamond Lake and the PacWest silicon smelter project. *See*, Testimony of Tracy  
8 Morgan; Testimony of Phyllis Kardos. Mr. Snow testified regarding both of these  
9 projects. Mr. Snow stated that the application regarding the Diamon Lake quarry  
10 project was withdrawn by the applicant and that his department had not had any  
11 further communications with the applicants regarding future plans for that project.  
Testimony of Greg Snow. Regarding the PacWest silicon smelter project, Mr. Snow  
testified that the County has not heard from PacWest for a number of years, he also  
noted that there were no pending development applications involving PacWest and  
that the property owned by PacWest was rezoned based upon the uniform standards  
applied to the entire county. *Id.*

12 The Appellants also took issue with the County's evaluation because they  
13 assert the County failed to evaluate the effect the proposed updates would have on  
14 the potential for development. *See*, Testimony of Phyllis Kardos. WAC 197-11-  
15 060(4)(d) requires the County to consider impacts, including "those effects resulting  
16 from growth caused by a proposal, as well as the likelihood that the present proposal  
17 will serve as a precedent for future actions." The Appellants specifically took issue  
18 with the fact that no consideration for this issue was made in the new Checklist  
19 developed by the County. *See*, Testimony of Phyllis Kardos. However, Ben Floyd  
20 testified that the County did evaluate the potential effect of the proposed updates on  
21 development. Testimony of Ben Floyd. The County also correctly noted that the  
22 SEPA threshold determination process is not limited to consideration of the checklist,  
23 nor is the checklist designed to act as a comprehensive document addressing all  
factors that should be considered in the threshold determination process. *See*,  
Testimony of Nathan Smith.

20 Based upon the evaluation of probable development the County identified and  
21 addressed probable impacts from the proposed updates in the new Checklist. *Id.* As  
22 detailed above, the County went through each environmental element included in the  
23 Checklist and identified expected impacts and then identified the mitigation  
measures that would be applied through the relevant regulations. The Appellants

1 assert that the County failed to consider probable impacts to wildlife, wildlife  
2 habitat, ground and surface water, and climate change. *See*, Appeal.

3 In her testimony, Tracy Morgan alleged that the County failed to adequately  
4 consider the role of climate change on the probable impacts from the proposed  
5 updates. *See*, Testimony of Tracy Morgan. Ms. Morgan posited that climate change  
6 impacts need to be considered in conjunction with every probable environmental  
7 impact of the proposed updates because climate change impacts every component of  
8 human interaction with the environment. *Id.* In support of her arguments, Ms.  
9 Morgan submitted a large number of documents, including studies and  
10 administrative guidance regarding the impacts of climate change. *See generally*,  
11 RG\*NEW Exhibits. The County specifically noted during the hearing that the effects  
12 of climate change were considered during the SEPA process. Mr. Floyd testified that  
13 the County evaluated climate change and potential mitigation measures in relation  
14 to effects on air quality, greenhouse gas emission, stormwater management,  
15 vegetation management, and measures to prevent and respond to environmental  
16 health hazards. Testimony of Ben Floyd. In fact, the Appellants acknowledge that the  
17 County took measures to include consideration for the effects of climate change  
18 during the updated SEPA process. *See*, Testimony of Phyllis Kardos. The testimony  
19 and evidence presented by the Appellants support the importance of considering  
20 climate change in relation to the County's proposed updates, however they fail to  
21 demonstrate how the County's consideration of climate change during the SEPA  
22 process were insufficient to comply with the procedural requirements of SEPA.

23 The Appellants also argued that the County failed to adequately consider the  
effects of development on wildlife and wildlife habitat. In support of this argument,  
Appellants presented the testimony by Woody Myers and Ed Styskel, detailed above.  
The testimony from Mr. Myers establishes that a significant amount of development  
in the County has the potential to cause significant impacts to wildlife habitat in the  
form of "habitat fragmentation," which would lead to very serious impacts to wildlife.  
Testimony of Woody Myers. Mr. Myers assertions regarding these potential impacts  
assume that the County's proposed updates will lead to significant development,  
thereby causing the impacts detailed by Mr. Myers. The testimony and evidence  
presented lacks any correlation between the established levels of probable  
development and the significant impacts presented by Mr. Myers. Additionally, the  
County's new Checklist considers impacts to wildlife and wildlife habitat, specifically  
noting mitigation measures to support habitat connectivity. County Exhibit 2, pp. 16-  
17. Furthermore, the County's proposed updates were sent to WDFW for review on at  
least two occasions and WDFW declined to comment both times. Brief of Pend Oreille  
County, p. 5.

1           Testimony presented by the Appellants from Ed Styskel is similarly deficient.  
2 While Mr. Styskels testimony clearly establishes that domestic cats and dogs can  
3 potentially cause significant impacts to wildlife and wildlife habitat, his argument do  
4 not address the probability that these impacts will occur in light of the probability  
5 and/or intensity of residential development within the County. Moreover, this  
6 argument assumes that dog and cat owners will engage in these detrimental  
7 behaviors and lacks evaluation of the likelihood or rate at which these behaviors are  
8 likely to occur. Without an established correlation between the probability of dogs  
9 and cats roaming unimpeded through wildlife habitat and the possible impacts this  
10 could cause, the County's failure to consider this as part of the threshold  
11 determination is not clearly erroneous.

12           Finally, the Appellants argued that the County failed to adequately consider  
13 the impacts of the proposed updates on ground and surface water. In support of this  
14 argument Appellants presented testimony from Jerry White. Mr. White's testimony  
15 focused on the potential effects of development in the county on the ground and  
16 surface waters within WRIA 55. Mr. White concluded that in the event residential  
17 developments relying on permit exempt wells in WRIA 55 exceeds the estimates  
18 within the WRIA 55 management plan, there will be significant adverse impacts to  
19 the groundwater and the flow rate of the Little Spokane River, which will in turn  
20 significantly impact the redband trout and other fish species in the river. *See,*  
21 *Testimony of Jerry White.* The testimony provided by Mr. White established that in  
22 the event there is significant residential development within the WRIA 55 area, it  
23 will result in significant environmental impacts to the water and fish species in the  
Little Spokane River. These impacts, however, are contingent on a residential growth  
rate occurring in the County that has not been shown to be probable. Based upon the  
new Checklist and testimony provided by Greg Snow and Ben Floyd it is evident that  
the County considered the potential impacts to ground and surface waters in the  
County in a manner that complies with the procedural requirements of SEPA.

#### IV. DECISION

19           Based upon the record in this matter and giving substantial weight to the  
20 County's threshold determination, the Hearing Examiner finds that the County's  
21 threshold determination was based upon information reasonably sufficient to  
22 evaluate the environmental impacts of the proposed updates to the comprehensive  
23 plan and development regulations. The record further reflects that the applicable  
environmental factors were considered in a manner which amounted to prima facie

1 compliance with the procedural requirements of SEPA. Therefore, the appeal of the  
2 County's threshold DNS is denied.

3 Any conclusion of law above that is a finding of fact is deemed a finding of fact.

4 DATED this 22<sup>nd</sup> day of November, 2022

5 PEND OREILLE COUNTY  
6 HEARING EXAMINER

7 

8 CHRISTOPHER A. ANDERSON  
9 WSBA #45361

10 **NOTICE OF FINAL DECISION AND NOTICE OF RIGHT TO APPEAL**

11 Pursuant to xx.92.070 PCDR, the decision of the Hearing Examiner on an  
12 application for appeal of an administrative decision is final and conclusive unless  
13 within twenty-one (21) calendar days from the issuance of the Examiner's decision, a  
14 party with standing files a land use petition in Superior Court of Pend Oreille County  
15 in accordance with the provisions of xx.14.150 PCDR.

16 On November 22, 2022, a copy of this decision will be mailed by first class mail  
17 to the Appellant, and by e-mail to other parties of record. The date of issuance of the  
18 Hearing Examiner's decision is November 28, 2022.

19 **THE LAST DAY FOR APPEAL OF THIS DECISION TO SUPERIOR COURT  
20 BY LAND USE PETITION IS DECEMBER 19, 2022.**

21 The complete record in this matter, including this decision, is on file during  
22 the appeal period with the Pend Oreille County Community Development  
23 Department, 418 South Scott Avenue, Newport, WA 99156, (509) 447-4821. The file  
may be inspected Monday through Friday of each week, except holidays, between the  
hours of 8:00 a.m. and 4:30 p.m. Copies of the documents in the record will be made  
available at the cost set by Pend Oreille County.



## Declaration of Mailing

The undersigned, under the penalty of perjury under the laws of the State of Washington, makes the following declaration based on his/her personal knowledge and belief:

That I am now and at all times hereinafter mentioned was a citizen of the United States of America, a resident of Spokane County, State of Washington, and over the age of majority; that on the 22<sup>nd</sup> day of November 2022, I delivered a copy of the attached **DECISION RG\*NEW APPEAL OF SEPA THRESHOLD DETERMINATION** to the following parties by the manner indicated below:

<p>Appellants / Representative Address: Phyllis J. Kardos 2843 Scotia Road Newport, WA 99156 <a href="mailto:pkardos_jean@yahoo.com">pkardos_jean@yahoo.com</a></p>	<p>Via U.S. Mail, postage paid <input checked="" type="checkbox"/> Via Certified Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Email Delivery <input checked="" type="checkbox"/> Via Personal Delivery <input type="checkbox"/> Inter Office Mail <input type="checkbox"/></p>	
<p>Nathan G. Smith 510 W. Riverside Ave. Suite 800 Spokane, WA 99201 <a href="mailto:Nathan.Smith@kutakRock.com">Nathan.Smith@kutakRock.com</a></p>	<p>Via U.S. Mail <input checked="" type="checkbox"/> Via Certified Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Email Delivery <input checked="" type="checkbox"/> Via Personal Delivery <input type="checkbox"/> Inter Office Mail <input type="checkbox"/></p>	
<p>Greg Snow Community Development Director 418 South Scott Avenue PO Box 5066 Newport, WA 99156 <a href="mailto:gsnow@pendoreille.org">gsnow@pendoreille.org</a></p>	<p>Via U.S. Mail <input type="checkbox"/> Via Certified Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Email Delivery <input checked="" type="checkbox"/> Via Personal Delivery <input type="checkbox"/> Inter Office Mail <input type="checkbox"/></p>	
<p>Vickie Koehler 418 South Scott Avenue PO Box 5066 Newport, WA 99156 <a href="mailto:vkoehler@pendoreille.org">vkoehler@pendoreille.org</a></p>	<p>Via U.S. Mail <input type="checkbox"/> Via Certified Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Email Delivery <input checked="" type="checkbox"/> Via Personal Delivery <input type="checkbox"/> Inter Office Mail <input type="checkbox"/></p>	
<p>Andy Huddleston 418 South Scott Avenue PO Box 5066 Newport, WA 99156 <a href="mailto:AHuddleston@pendoreille.org">AHuddleston@pendoreille.org</a></p>	<p>Via U.S. Mail <input type="checkbox"/> Via Certified Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Email Delivery <input checked="" type="checkbox"/> Via Personal Delivery <input type="checkbox"/> Inter Office Mail <input type="checkbox"/></p>	

<p>Andrea Forster  32 Wildwood Lane  Newport, WA 99156  <a href="mailto:andreamessages@msn.com">andreamessages@msn.com</a></p>	<p>Via U.S. Mail  Via Certified Mail  Via Facsimile  Via Email Delivery  Via Personal Delivery  Inter Office Mail</p>	<p><input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input checked="" type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/></p>
<p>Dolly Hunt  <a href="mailto:dhunt@pendoreille.org">dhunt@pendoreille.org</a></p>	<p>Via U.S. Mail  Via Certified Mail  Via Facsimile  Via Email Delivery  Via Personal Delivery  Inter Office Mail</p>	<p><input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input checked="" type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/></p>
<p>Brian Kistler  510 W. Riverside Ave. Suite 800  Spokane, WA 99201  <a href="mailto:Brian.Kistler@KutakRock.com">Brian.Kistler@KutakRock.com</a></p>	<p>Via U.S. Mail  Via Certified Mail  Via Facsimile  Via Email Delivery  Via Personal Delivery  Inter Office Mail</p>	<p><input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input checked="" type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/></p>
<p>Bob Rumsey  534 South Newport Avenue  Newport, WA 99156</p>	<p>Via U.S. Mail  Via Certified Mail  Via Facsimile  Via Email Delivery  Via Personal Delivery  Inter Office Mail</p>	<p><input checked="" type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/></p>
<p>Ed Styskel  545 Quail Loop  Newport, WA 99156  <a href="mailto:edstyskel@gmail.com">edstyskel@gmail.com</a></p>	<p>Via U.S. Mail  Via Certified Mail  Via Facsimile  Via Email Delivery  Via Personal Delivery  Inter Office Mail</p>	<p><input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input checked="" type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/></p>
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<p>Jerry White  <a href="mailto:jerry@spokaneriverkeeper.org">jerry@spokaneriverkeeper.org</a></p>	<p>Via U.S. Mail  Via Certified Mail  Via Facsimile  Via Email Delivery  Via Personal Delivery  Inter Office Mail</p>	<p><input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input checked="" type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/></p>
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Woody Myers <a href="mailto:wlmw969@centurylink.net">wlmw969@centurylink.net</a>	Via U.S. Mail Via Certified Mail Via Facsimile Via Email Delivery Via Personal Delivery Inter Office Mail	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Pamela Luby <a href="mailto:pluby101@gmail.com">pluby101@gmail.com</a>	Via U.S. Mail Via Certified Mail Via Facsimile Via Email Delivery Via Personal Delivery Inter Office Mail	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

The Undersigned certifies under penalty of perjury under the laws of the State of Washington, that the foregoing statement regarding services is true and accurate.

**DATED** this Tuesday, November 22, 2022.

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Assistant to the Pend Oreille County  
Hearing Examiner  
Kevin Ruiz